

**VOLUNTARY CLEANUP CONTRACT
06-[PCAS#]-NRP**

**IN THE MATTER OF
[SITE NAME], [COUNTY]
and
[COMPANY]**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and [Company name], pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2005), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200 (2002), with respect to the property located at [location], South Carolina. [Site Name/The property] includes approximately [Number of acres] acres and is bounded generally by [Location and description of the property]. In entering this Contract, the Department relies on the representations of the [“Information and Certification” (submitted [date] by [the Company])], which is incorporated into this Contract and attached as Appendix A. [A plat map of the property may be attached to the Contract if deemed necessary.]

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.

- A. “[Abbreviated company name]” shall mean [Official company name].
- B. “Bona Fide Prospective Purchaser” shall have the same meaning as that in CERCLA, Section 222.
- C. “Contract” shall mean this Voluntary Cleanup Contract.
- D. “Department” shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the

subject matter of this Contract..

- E. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants (as defined herein), present or existing on or under the Site as of the execution date of this Contract.
- F. "Hazardous Substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
- G. "Non-Responsible Party" (or "NRP") shall mean any party which is neither:
 - a. A responsible party at the time the voluntary cleanup contract is signed, including lenders, economic development agencies, fiduciaries, trustees, executors,

administrators, custodians, subsequent holders of a security interest; nor

- b. A parent, subsidiary of, or successor to a responsible party.
- H. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- I. "Pollutant or Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- H. "Property" shall mean property as described in the Information and Certification attached as Appendix A, and that is subject to ownership, prospective ownership, or possessory or contractual interest of [the Company.]
- I. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.

- J. "Responsible Party" shall mean:
- a. The owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility;
 - b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;
 - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances; and/or
 - d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, as defined in CERCLA Section 101 (38), or sites selected by such person from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.
- L. "The Site" shall mean all areas where a contaminant has been released, deposited, stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).
- M. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2005).
- N. "Work Plan" shall mean the plan for additional response actions to be conducted at the Property as described in Paragraph 5 of this

Contract.

2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:

A. [Various details of the Site/property: owner, operator, past assessment/remedial activities.]

B. [Proposed future use of the property.]

3. [The Company] is a [state of company's location] ["business corporation," etc. - modify according to party] with its principal place of business located at [address of headquarters]. [The Company] is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property. [The Company] has had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.

4. [The Company] agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Property that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and [the Company]'s contact person for matters relating to this Contract. [The Company] will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify [the Company] in writing of any deficiencies in the Work Plan, and [the Company] shall respond in writing within thirty (30) days to the Department's comments. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in

South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. [The Company shall perform a baseline characterization of all media on the Property that may have been impacted by past operations.]
 - B. [Based on the results of the assessment activities specified above, the company shall agree to take reasonable steps, approved by the Department, to stop continuing releases and to address identified contamination in a manner that is protective of human health and the environment and consistent with the intended future use of the property. Appropriate measures shall be taken to address the presence of hazardous substances (1) in excess of appropriate human-health and ecological risk-based standards via all potential routes of exposure, and (2) in excess of appropriate standards for contaminant migration to groundwater.]
5. [The Company] shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The [Company] agrees that the Health and Safety plan is submitted for informational purposes only to the Department and any liability that may result from implementation of the Health and Safety Plan shall rest solely with the [Company].
6. [The Company] shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by [the Company] pursuant to this Contract.
7. [The Company] shall preserve all drums, bottles, labels, business and operating

records, contracts, Site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, [the Company] shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.

8. Within [XX number of days] of [Work Plan approval or the execution date of this Contract] and quarterly thereafter, [the Company] shall submit to the Department's project manager a written progress report that must include the following: (a) actions taken under this Contract during the previous reporting period; (b) actions scheduled to be taken in the next reporting period; (c) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (d) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

9. All correspondence which may be required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (i) regular U.S. mail, (ii) certified or registered mail, postage prepaid, return receipt requested, (iii) or nationally recognized overnight delivery service company or by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

All correspondence, work plans, and reports (including four (4) copies of all work plans and reports) should be submitted to:

(Project Manager)
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

[The Company] (contact information)

10. The Department and [the Company] recognize that public participation is an important component of the Voluntary Cleanup Contract. Specific functions of the Department and [the Company] are as follows:

- A. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005) as outlined below:
 - a. Upon signature of this Contract by [the Company], the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the affected community. A thirty-day period following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.
 - b. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be done solely at the Department's discretion.
 - c. A public informational meeting will be held if requested by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any time during the thirty-day comment period. In the event that a public meeting is deemed necessary, the Department will provide approximately two weeks advance notice of the meeting to the public and will extend the public comment period at least through the end of the day following the

public meeting. The Department will not execute the contract during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the site at any time after the contract is executed until the certificate of completion is issued.

- B. [the Company] agrees to enhance the public knowledge of the site response activities by:
- a. Erecting a sign(s) at each entrance onto the reference property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one day after publication of any public announcement about the site placed by the Department in any newspaper of general circulation in the community.
 - b. The sign will state “Voluntary Cleanup Project by [the Company] under Voluntary Cleanup Contract (VCC number) with the South Carolina Department of Health and Environmental Control.” The sign shall provide a brief description of the scope of activities under the NRP contract and contact information for a representative of [the Company] and the Department. All required lettering on the sign must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the subject property.
 - c. Within 10 days after erecting the sign, [the Company] shall furnish to the Department photographs of the sign along with a site location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly-accessible road, waterway, etc. and should include an appropriately sized scale reference so that Department may determine the size of the sign and effectiveness of the lettering. [the Company] agrees to revise the sign if the Department determines the sign is not legible.

- d. [the Company] must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract period until a certificate of completion is issued on the site.
- e. In the event that any sign must be removed to accommodate building or grading activities, [the Company] shall replace the sign within two days. If the sign cannot be restored to the original location, [the Company] may relocate it to another location meeting the conditions specified above.

All costs incurred by the Department for public participation [e.g., public notice(s), building and equipment rental(s) for public meetings, etc.] will be paid by [the Company].

11. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its Non-Responsible Party lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries but only to the extent that such parties have never been a Responsible Party at the Site and the Department. The Department shall be notified in writing upon transfer of ownership of the property-

12. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation not a signatory of this Contract or a signatory's NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries.

13. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than [the Company] and its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and

Federal law.

14. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). [The Company] and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee successor or other transferee of the Property.

15. As provided for by S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (D) (2002), [the Company] shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice. Invoices shall be submitted to:

Name

[Billing Contact Information]

16. The Department and [the Company] agree that the following are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005): [the Company], its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.

17. The Department and [the Company] agree that the following are entitled to protection from third-party claims for equitable relief or damages relating to "Existing

Contamination" at the Site, as provided by S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005): [the Company], its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. This limitation on liability does not apply to any contamination, releases, and consequences caused by [the Company] or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this contract is lawfully terminated by either party.

18. If hazardous substances in excess of residential standards exist at the Property after [the Company] has completed the actions required under this Contract, [the Company] shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of [the Company] and witnessed, signed, and sealed by a notary public. [The Company] shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in [XXXX] County. The signed covenant shall be incorporated into this contract as an Appendix. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require [the Company] or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. [The Company] or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report may be submitted in a manner prescribed by the Department.

19. [Two (2) years] after the execution date of this Contract, [the Company] or subsequent owner of the Property shall provide the Department with the following information concerning the new operation at the Property: the number of jobs created; the

amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; total investment in the site; and any other information that demonstrates that the activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.

20. Upon successful completion of the terms of this Contract as referenced in Paragraphs 5, 18, and 19 above, [the Company] shall submit to the Department a written notice of completion [OR modify in the case of long-term monitoring, etc. to give protection earlier]. As part of this notice, the company shall report the costs of all environmental work and the total amount invested in the site for property acquisition and capital improvements. Once the Department determines satisfactory completion of the Contract terms, the Department, as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005), will give [the Company] a Certificate of Completion that provides a covenant not to sue [the Company], its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries for Existing Contamination, except for releases and consequences caused by [the Company] or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. In consideration of the protections from the Department, [the Company] and its lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

21. [The Company] specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, [the Company] and its lenders,

parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries are responsible and liable for any and all contamination, releases, and consequences they cause or contribute to the Site. Should environmental contamination neither previously-identified nor identified during the performance of response actions required under this Contract be discovered at the Site after the execution date of the Certificate of Completion, the burden is on [the Company] or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries to demonstrate to the Department's satisfaction that the contamination, releases, and consequences were not caused by [the Company] or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries.

22. [The Company] or subsequent owners of the Property and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should [the Company] or subsequent owners of the Property elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard created by [the Company] shall be stabilized and/or mitigated such that the Property does not pose a hazard to human health or the environment that did not exist prior to any initial response action addressing contamination identified in this Contract.

23. The Department may terminate this Contract only for cause, which may include but is not limited to the following: (a) events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract; (b) failure to complete the terms of this Contract or the Work Plan; (c) failure to submit timely payment for oversight costs as defined in Paragraph 16 above, (d) additional contamination or releases or consequences caused by [the Company] or its lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries; (e) providing the Department with false or incomplete information or knowing failure to disclose material information; or (f) change in [the Company's] its lenders', parents', subsidiaries', and successors', including new

purchasers', lessees', heirs', and beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract.

24. Upon termination of the Contract, the covenant not to sue, contribution protection, and liability protection will be null and void. However, if the lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries provide false or incomplete information or if its business activities change such that they are inconsistent with the terms and conditions of this Contract, then the covenant not to sue, contribution protection, and liability protection shall become null and void only as to the lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries involved in the action giving rise to the termination without affecting the protections provided by this Contract to the previous Non-Responsible Parties and other NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries.

25. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

DATE: _____
Columbia, South Carolina

Patrick T. (Pat) Walker, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Legal Office

DATE: _____

[COMPANY NAME]

Signature

DATE: _____

Printed Name and Title

APPENDIX A